1957 *Present :* Basnayake, C.J., and Pulle, J.

S. COOMARASWAMY *et al.*, Appellants, *and* P. J. HUDSON (Government Agent, N. P.), Respondent

S. C. 247–248—D. C. Jaffna, 6,852

Land Acquisition Ordinance (Cap. 203)—Acquisition of contiguous allotments of land—Determination of compensation for severance and injurious affection—Claims to compensation—Subsequent amendment not permissible—Sections 6, 7, 12 (1), 14, 21 (b) (c), 23, 32.

Where several contiguous allotments of land belonging to the same owner are sought to be acquired by the Crown as a single unit, a claim to compensation for severance and injurious affection under paragraphs (*b*) and (*c*) of section 21 of the Land Acquisition Ordinance cannot be made in respect of any one of those allotments in its relation to the other allotments. In such a case, the date relevant to the assessment of compensation is that on which tender is made by the Government Agent, and the question of severance cannot be decided with reference only to the time of vesting of title in the Crown under section 12 (1) of the Ordinance, as amended by the Land Acquisition (Amendment) Ordinance, No. 51 of 1947.

According to sections 6, 14 and 23 of the Land Acquisition Ordinance (now repealed), a claim to compensation once made in response to a notice under section 6 or section 14 is final and does not admit of any amendment thereafter, Nor does section 32 permit such a claim to be altered subsequently.

APPEALS from a judgment of the District Court, Jaffna.

H. V. Perera, Q.C., with *C. Ranganathan*, for the 1st defendant-appellant in Appeal No. 247 and for the 1st defendant-respondent in Appeal No. 248.

V. K. Palasuntharam, for the 2nd and 3rd defendants-appellants in Appeal No. 248 and for the 2nd and 3rd defendants-respondents in Appeal No. 247.

B. C. F. Jayaratne, Crown Counsel, with *J. R. M. Perera*, Crown Counsel, for the plaintiff-respondent in both appeals.

Cur. adv. vult.

July 22, 1957. PULLE, J.—

There are two appeals in this case, one by the 1st defendant and the other by the 2nd and 3rd defendants. They arise out of proceedings taken under the Land Acquisition Ordinance (Cap. 203) to acquire a property described as lot 1 in Preliminary Plan A 1578 dated 6th April, 1949. To the south of lot 1 was a land also belonging to the 1st defendant and it is shown as lots 2 and 3. These were acquired at the same time as lot 1. To the north of lot 1 is a land belonging to the 2nd and 3rd

defendants. No portion of this land has been acquired. Lot 1 is a rectangular strip 20 feet wide and 345 feet in length of which the 1st defendant was entitled to an undivided half share and the 2nd and 3rd defendants to the remaining half. It is common ground that lot 1 served, by agreement among the defendants, as a means of access to the lands on either side of it. A certain result of the acquisition of lot 1 was that the owners of the land to the north of it lost the use of it as a roadway. Whether the 1st defendant could be said in any relevant sense to have lost the use of lot 1 as a means of access has been the subject of dispute in view of the fact that lots 2 and 3 to the south and contiguous to lot 1 were also acquired at the same time.

The market value of lot 1, namely, Rs. 23,331/- is no longer in dispute although at one stage of the proceedings it was. The claim of the 1st defendant is that in addition to the market value he is entitled to a further sum of Rs. 16,500/- as damages sustained by reason of the acquisition of lot 1. This claim was entirely disallowed, first on the ground that lots 2 and 3 having passed to the ownership of the Crown it could not be said that the acquisition of lot 1 resulted in damage on account of severance or injurious affection under paragraphs (*b*) and (*c*) of section 21, and secondly, on the ground that the claim was barred by section 23, inasmuch as the 1st defendant had omitted to make such a claim until he delivered an amended statement on 20th August, 1953, in answer to the libel of reference.

The 2nd and 3rd defendants in their first statement dated 18th October, 1950, by way of answer to the libel of reference claimed a sum of Rs. 7,000/- on account of the damage sustained by them owing to their land to the north of lot 1 being injuriously affected by the acquisition. By an amended statement delivered on the 20th August, 1953, these defendants claimed under this head Rs. 18,900. The learned District Judge estimated the damage at Rs. 11,665/- but awarded only Rs. 7,000/- on the ground that a claim in excess of Rs. 7,000/- was barred by section 23.

Before dealing with the legal submissions on the claims for damages by the three defendants it is necessary to set out certain dates and also to refer to the proceedings in D.C. Jaffna case No. 6,888 in which compensation was determined by court for lots 2 and 3 belonging exclusively to the 1st defendant. The three lots were dealt with together by one mandate and one notice under section 6 of the Land Acquisition Ordinance and the inquiries under section 7 were fixed for the same day, namely, the 22nd August, 1949. On this date the compensation tendered for lot 1 was Rs. 9,160/- and for lots 2 and 3 Rs. 72,491. On 16th March, 1950, the Minister of Agriculture and Lands directed the Government Agent to take possession of the three lots, from which date the title thereto became vested absolutely in the Crown by virtue of the provisions of section 12 (1) of the Ordinance, as amended by the Land Acquisition (Amendment) Ordinance, No. 51 of 1947.

The points taken by the 1st defendant are that the learned District Judge was wrong in holding (*a*) that by reason of the acquisition of lot 1 he was not entitled to compensation for severance and injurious affection under paragraphs (*b*) and (*c*) of section 21 and (*b*) that in any event the claim was barred by section 23.

The date relevant to the assessment of compensation is that on which tender is made by the Government Agent and it is manifest from the libel of reference in the present case and in the connected case No. 6,888 that compensation was tendered on 22nd August, 1949, when the title to the lots had not yet become vested in the Crown. I am of opinion that in the special circumstances of this case it would be unreal and extremely artificial to hold that the 1st defendant was entitled to any claim based on severance or injurious affection. If there is one fact which is firmly established it is that these contiguous lots were sought to be acquired as a single unit for the building of a post office. Lot 1 was the subject of a separate assessment because it was thought erroneously that the acquiring authority could not make one assessment for the three lots taken as a single entity. In my view no question of severance could arise when claims and tender of compensation were all made on the footing that eventually all the lots would be taken over by the Crown. Severance must be of a permanent character in the contemplation of both parties. If the date of the vesting of title alone determined whether there has been a severance then it ought to follow that in assessing compensation for lots 2 and 3 severance of lot 1 must be taken into account and in assessing compensation for lot 1 damages must be awarded for its severance from lots 2 and 3. In effect, therefore, two sets of damages have to be added to the market value of the three lots ultimately acquired as a single entity. An interpretation of section 21 (*b*) or (*c*) which produces this result does not commend itself to me. In other words the question does not fall to be decided with reference only to the time of title vesting in the Crown. I find myself in agreement with the trial Judge that the claim of the 1st defendant founded on section 21 (*b*) or (*c*) is misconceived. This disposes of the appeal of the 1st defendant.

The learned District Judge awarded the 2nd and 3rd defendants only Rs. 7,000 as damages for severance although he assessed the same at Rs. 11,665/50 because he accepted the submission of the acquiring authority that a claim in excess of Rs. 7,000/- was barred by section 23. The first part of section 23 is in my opinion clear and speaks for itself. It runs as follows :—

> " When the person interested has made a claim to compensation pursuant to any notice mentioned in section 6 or in section 14, the amount awarded to him shall not exceed the amount so claimed or be less than the amount tendered by the Government Agent under section 7, or the amount which the Government Agent shall have offered to give under section 13. " The second part of section 23 deals with certain exceptional situations with which we are not concerned in the present case.

There is no evidence that any particular sum was claimed as compensation by any of the defendants when they appeared pursuant to the notice under section 6. But they did make claims in answer to the libel of reference. The 1st defendant by his statement of 18th October, 1950, claimed to be paid compensation on the basis that the market value of lot 1 was Rs. 28,000/-. On the 20th August, 1953, the 1st defendant claimed in addition to his share of the market value the sum of Rs. 16,500/- as

damages which he said was the amount by which the Crown benefited by reason of the acquisition of lot 1. As the case was eventually presented on his behalf the additional claim represented damages under paragraphs (*b*) and (*c*) of section 21.

The claim on behalf of the 2nd and 3rd defendants was less ambiguous. In their first statement filed on 18th October, 1950, they asked for compensation in a figure representing the market value of lot 1 estimated at Rs. 28,000/- and a sum of Rs. 7,000/- as damages caused by the severance of the lot from the remaining unacquired portion of their land immediately to the north. As stated earlier, in the amended statement of 20th August, 1953, they claimed Rs. 18,900/- under the head of damages.

In regard to the interpretation of section 23 we have not had the assistance of any reported case. Now obviously the first set of claims of these defendants were made pursuant to notices mentioned in section 14. The last named section is explicit that the notice should require the claimants " to state to the court on or before a day to be therein mentioned the sum which he claims as compensation for his interest in the land as needed. " In my opinion the statement filed commits the claimant irrevocably to the figure named by him. I think it would be a misuse of language to say that because an amendment of each of the statements of claim was allowed the amended figures represented the sums claimed " pursuant to any notice mentioned in section 14 ". I obtain support for this view from the commentary by Donough on *The Law of Land Acquisition and Compensation* on section 25 of the Indian Acquisition Act, No. 1 of 1894, which is the counterpart of our section 23. Sub-section 1 of section 25 reads,

> " When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11. " Commenting on this sub-section the author states,
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> " A claim to compensation tendered to the Collector under section 9 may be made in writing, if he so directs, or otherwise, but it is important that the statement should be carefully made, for the amount cannot be enhanced beyond the figure stated. "

Reference was made in the course of the argument to section 32 under which proceedings taken after a reference to court are made subject to the rules, practice and procedure followed in ordinary civil suits, " so far as the same can be made applicable ". I do not think it is permissible to invoke section 32 for the purpose of enlarging or restricting the rights of the acquiring authority or a claimant which are specifically provided for in the Ordinance. The rules of procedure operate only within the framework of the special provisions defining the rights and liabilities of the parties to a libel of reference. If the view which I have expressed is correct, the applications to amend the statements by altering the amounts claimed as compensation should have been disallowed, as those amendments would not have served any purpose. In the present case the amendments

were allowed leaving open the question whether section 23 was a bar to the award of greater compensation than that claimed on the first statements.

The appellants complain that the learned District Judge was wrong in ordering that each party should bear his own costs. Under section 30 (2) when the amount awarded by court exceeds the amount tendered by the Government Agent such costs shall ordinarily be paid by the Government Agent. In the present case the amount ultimately awarded is about three times what was tendered by the acquiring authority. The trial Judge stated that on his finding the defendants were getting more than what the Government Agent tendered but less than what he offered by 1 D10 which is a letter dated 20th February, 1953, addressed by the Government Agent's Proctor to the defendants' Proctor. By that letter an offer was made of Rs. 23,100/- as market value of lot 1 and Rs. 7,000/- as damages. Lot 1 is 4·62 lachams which the parties agreed at one stage of the trial, namely, on 27th May, 1954, should be valued at Rs. 5,050/- per lacham. This would give for the market value slightly more than Rs. 23,100/-. namely, Rs. 23,331/-. The learned trial Judge has obviously misdirected himself on the question of costs. I would, therefore, amend the decree under appeal by giving to the appellants the costs in the District Court up to and including the 27th May, 1954. Subject to this variation th appeal should be dismissed with costs.

BASNAYAKE, C.J.—

I have had the advantage of reading the judgment prepared by my brother Pulle with which I agree.

It is clear from a reading of sections 6, 14, and 23 of the Land Acquisition Ordinance (now repealed) that a claim once made in response to a notice under section 6 or in response to a notice under section 14 is final and does not admit of any amendment thereafter.

Section 32 affords no authority for holding that a claim under either of these sections can be altered.

The dearth of decisions on the subject is due to the fact that the provisions are not obscure and need no elucidation.

In the Madras case of *Secretary of State v. Subramania Ayyar* [1], the Court in construing the corresponding section of the Indian Act came to the very same conclusion that we have formed in this case. The Court there expressed the view that it would not be open to a claimant to make out a fresh case, whether by way of supplementary claims to compensation or otherwise.

Appeals dismissed.

[1] *(1930) A. I. R. Madras 576.*